U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-D-F-M-

DATE: JUNE 10, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a kindergarten teacher, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is normally attached to this immigrant classification. *See* § 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director, Texas Service Center, denied the petition. The Director found that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of a job offer would be in the national interest.

The matter is now before us on appeal. In her appeal, the Petitioner argues that she satisfies the national interest waiver requirements.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate his or her qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences arts or business. Because this classification normally requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> > (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

> who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
>
> > (i) National interest waiver. . . . the Attorney General[1] may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Matter of New York State Department of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner's assurance that he or she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. *Id.* at 219. Rather, a petitioner must justify projections of future benefit to the national interest by establishing a history of demonstrable achievement with some degree of influence on the field as a whole. *Id.* at 219, n.6.

II. ANALYSIS

The Petitioner submitted evidence that she received a bachelor of elementary education degree from [redacted] in the Philippines in 1991. In addition, the Petitioner provided a January 27, 2012, "Expert Opinion Evaluation" report prepared by [redacted] professor of operations

[1] Pursuant to section 1517 of the Homeland Security Act of 2002 ("HSA"), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA "shall be deemed to refer to the Secretary" of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

management and management science, [redacted] stating that she has "[a]t least nineteen years of post-baccalaureate progressive work experience in education." The Director determined that the Petitioner had more than five years of progressive post-baccalaureate experience equivalent to an advanced degree under the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B), and that she qualified as a member of the professions holding an advanced degree. The sole issue in contention is whether the Petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest according to the three-pronged analysis set forth in *NYSDOT*.

A. Substantial Intrinsic Merit

The Petitioner submitted documentation showing that her work as a school teacher for [redacted] is in an area of substantial intrinsic merit. Accordingly, the record supports the Director's determination that the Petitioner meets the first prong of the *NYSDOT* national interest analysis.

B. National in Scope

The Director found that the proposed benefit of the Petitioner's work as a school teacher with [redacted] would not be national in scope. With regard to the Petitioner's teaching duties, there is no evidence establishing that the benefits of her work would extend beyond her students and school district such that they will have a national impact. *NYSDOT* provides examples of employment where the benefits would not be national in scope:

> For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single school teacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

Id. at 217, n.3. In the present matter, the Petitioner has not shown the benefits of her impact as a kindergarten teacher beyond [redacted] and, therefore, that her proposed benefits are national in scope. On appeal, the Petitioner quotes *NYSDOT* at 217, n.3 regarding the limited scope of elementary school teachers, and expresses her disagreement with the quoted passage. Nevertheless, she acknowledges *NYSDOT*'s finding that the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement. *Id.* With regard to following the guidelines set forth in *NYSDOT*, the regulation at 8 C.F.R. § 103.3(c) provides that precedent decisions are binding on all USCIS employees in the administration of the Act.

In addition, the Petitioner states: "Every single schoolteacher plays a special role to the nation through the education of the young. Even if two school teachers have similar qualifications, each

always has a unique impact to the nation." The record, however, does not show how the Petitioner's work as a kindergarten teacher will impact the field beyond her school district. The Petitioner does not point to any evidence in the record indicating that her specific work will produce national benefits in the field of education. Accordingly, the Petitioner has not established that she meets the second prong of the *NYSDOT* national interest analysis.

C. Serving the National Interest

It remains, then, to determine whether the Petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. The Director determined that the Petitioner's impact and influence on her field did not satisfy the third prong of the *NYSDOT* national interest analysis.

On appeal, the Petitioner states that "the testimonial letters from administrators, teachers, students and parents" reflect "the significant impact of [her] work in the witnesses' professions." The Petitioner also contends that the letters "disclosed how her teaching contributions are implemented by the administrators, colleagues and the rest of the school community," but she did not identify any statements discussing the impact of her work on the field as a whole or explaining how her specific teaching methodologies are being widely implemented by others in the field of elementary education.

The Petitioner previously submitted letters of support from teachers and administrators who worked with her at and In addition, the Petitioner provided letters from her pupils at those schools and their parents. The references attested to the Petitioner's talent, dedication, and contributions to her schools, but they did not indicate that she has had the wider impact and influence necessary to qualify for the national interest waiver under *NYSDOT*.

For example, principal of listed the Petitioner's job duties and stated that she has worked "to help raise student achievement" at the school, but did not describe how the Petitioner's work has affected the field as a whole. Similarly, director of (formerly mentioned that the Petitioner "was responsible for implementing the school's curriculum for Grade 1-3" and described her teaching responsibilities. While indicated that the Petitioner "generously shared materials with other teachers on how best to encourage children to write," there is no documentary evidence showing that the Petitioner's work has had an impact beyond the schools where she has taught or has otherwise influenced the field as a whole. Finally, assistant principal, discussed the Petitioner's "excellent rapport with other teachers and administrators," "seriousness in the way she carries on her teaching career," "excellent academic background," her "genuine love for teaching children," "integrity in speech and action," and devotion to the school's ideals, but did not provide any specific examples of how the Petitioner's work has influenced the field of elementary education as a whole.

The Petitioner provided a letter from kindergarten chair at stating that the Petitioner is a valuable part of the kindergarten team at the school and that the team "has been chosen as a teaching team for further noted that other kindergarten teachers in the county "who are having difficulties are sent to the team in order to receive information that may help them become more effective educators." Although indicated that the Petitioner's expertise is "beneficial to the students and teacher[s] of the county," she did not explain how the Petitioner's work on the team has affected teaching practices outside of or has otherwise influenced the field as a whole.

In the statement she provided in support her appeal, the Petitioner also mentions her teaching qualifications and awards. The Petitioner previously submitted her academic records, employment verifications, her teaching license for "Teacher of the Year" award (1997) from and "Principal's Award" (2012) from

Educational degrees, occupational experience, licenses and professional certifications, membership in professional associations, and recognition for achievements are elements that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), (C), (E), and (F), respectively. However, in this instance the Petitioner is seeking a waiver of the job offer as a member of the professions holding an advanced degree. We note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. Pursuant to section 203(b)(2)(A) of the Act, individuals of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. *NYSDOT*, 22 I&N Dec. at 218, 222. Therefore, whether a given individual seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in her field of expertise. The national interest waiver is an additional benefit, separate from the classification sought, and therefore eligibility for the underlying classification does not demonstrate eligibility for the additional benefit of the waiver. Without evidence demonstrating that the Petitioner's work has affected the field as a whole, employment in a beneficial occupation such as a teacher, therefore, does not by itself qualify her for the national interest waiver.

Particularly significant awards may serve as evidence of the Petitioner's impact and influence on her field, but she has not demonstrated that the awards she received have more than local or institutional significance. In addition, the Petitioner previously submitted various certificates of participation and completion for training courses and seminars relating to her professional development. While taking courses and attending seminars are ways to increase one's professional knowledge and to improve as a teacher, there is nothing inherent in these activities to establish eligibility for the national interest waiver.

Furthermore, the Petitioner provided copies of her performance evaluations from [redacted] from 2009-2014. The Petitioner, however, does not indicate how the submitted evaluations demonstrate that she has influenced the field to a substantially greater degree than other similary qualified elementary school teachers and how her specific work has had significant impact outside of [redacted]

In light of the above, the Petitioner has not established that she meets the third prong of the *NYSDOT* national interest analysis.

III. CONCLUSION

Considering the letters of support and other evidence in the aggregate, the Petitioner has not shown that the proposed benefits of her work are national in scope. In addition, the Petitioner has not established that her past record of achievement is at a level that would justify a waiver of the job offer requirement. The record does not establish that the Petitioner's work has influenced the field as a whole or that she will otherwise serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. A petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that her influence be national in scope. *NYSDOT*, 22 I&N Dec. at 217, n.3. More specifically, she "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219, n.6 (the individual must have "a past history of demonstrable achievement with some degree of influence on the field as a whole").

A plain reading of the statute indicates that engaging in a profession (such as teaching) does not presumptively exempt such professionals from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual. On the basis of the evidence submitted, the Petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of A-D-F-M-*, ID# 16890 (AAO June 10, 2016)